

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ARMANDO FIERRO-PONCE,

14 Defendant.

CASE NO. CR20-0092-JCC-12

ORDER

15 This matter comes before the Court on Defendant Fierro-Ponce's motion for revocation
16 of his detention order (Dkt. No. 522). Having thoroughly considered the parties' briefing and the
17 relevant record, the Court finds oral argument unnecessary and hereby DENIES the motion for
18 the reasons explained herein.

19 **I. BACKGROUND**

20 In July 2020, a grand jury indicted Mr. Fierro-Ponce and his co-defendants with
21 conspiracy to distribute controlled substances in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(a),
22 and 846. (Dkt. No. 1.) In October 2020, Magistrate Judge Tsuchida ordered Mr. Fierro-Ponce
23 detained pending trial. (Dkt. No. 303.) In April 2021, Magistrate Judge Peterson continued
24 detention. (Dkt. No. 393.) Trial is scheduled for October 2021. (Dkt. No. 490.)

25 Mr. Fierro-Ponce moved to reopen detention based on what he described as new
26 information, namely, that a friend could act as a third-party custodian and house him, and that a

1 former employer was willing to rehire him. (Dkt. No. 515.) Judge Tsuchida denied the motion,
 2 finding this development insufficient to overcome the presumption that Mr. Fierro-Ponce is a
 3 danger to the community and a flight risk. (Dkt. No. 517 at 1.) Mr. Fierro-Ponce now moves to
 4 revoke that detention order (*See generally* Dkt. No. 522.)

5 **II. DISCUSSION**

6 **A. Legal Standard**

7 A district court reviews *de novo* a magistrate judge's order for pre-trial detention. *United*
 8 *States v. Koenig*, 912 F.2d 1190, 1191 (9th Cir. 1990). Such detention determinations are
 9 governed by the Bail Reform Act, 18 U.S.C. § 3142. Pre-trial detention is appropriate where the
 10 Government proves, by clear and convincing evidence, that the defendant presents a danger to
 11 the community or, by a preponderance of the evidence, that the defendant poses a flight risk. 18
 12 U.S.C. § 3142(e)(1); *United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985). To
 13 determine whether conditions of release may sufficiently assure both the defendant's appearance
 14 and public safety, the Court considers four factors:

- 15 1) The nature and circumstances of the offense charged, including, among other things,
 16 whether the offense is a crime of violence or involves a controlled substance;
- 17 2) The weight of the evidence;
- 18 3) The history and characteristics of the defendant, including his or her character,
 19 physical and mental condition, family ties, employment, financial resources, length of
 20 residence in the community, community ties, past conduct, history related to drug or
 alcohol abuse, criminal history, and any failures to appear for court proceedings; and
- 21 4) The nature and seriousness of the danger to any person or the community that would
 22 be posed by the person's release.

23 18 U.S.C. § 3142(g). In addition, because Mr. Fierro-Ponce was charged with a felony offense
 24 under the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, there is a rebuttable presumption
 25 in favor of his detention. 18 U.S.C. § 3142(e)(2)(A).

1 **B. 18 U.S.C. § 3142(g) Factors**2 1. Nature and Circumstances of the Offense

3 Mr. Fierro-Ponce's alleged conduct was very serious. According to the Government, he
 4 was involved in a sophisticated drug trafficking conspiracy. (*See generally* Dkt. No. 1) During
 5 the investigation, federal agents seized more than 140 pounds of methamphetamine. (Dkt. No. 79
 6 at 2.) Communications revealed members of the drug trafficking conspiracy's propensity for
 7 violence, including kidnapping plots and intimidation using violence and firearms. (*Id.*) The
 8 Government avers that evidence indicates Mr. Fierro-Ponce possessed at least one gun while
 9 engaging in drug trafficking. (Dkt. No. 79 at 13.) In sum, the Government alleges that Mr.
 10 Fierro-Ponce was involved in violent criminal conduct, which is a threat to community safety.

11 2. Weight of the Evidence

12 The weight of the evidence is generally the least important factor in the Court's analysis.
 13 *United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991). Even so, there is considerable
 14 evidence against Mr. Fierro-Ponce. The Government possesses months of wiretap recordings and
 15 electronic communications of the defendants discussing the conspiracy, as well as hundreds of
 16 hours of surveillance. (*See generally* Dkt. No. 79.) On one occasion, agents saw Mr. Fierro-
 17 Ponce meet with two other males, and later observed Mr. Fierro-Ponce tell another co-
 18 conspirator the police were following him. (*Id.* at 13.) The weight of the evidence against Mr.
 19 Fierro-Ponce reinforces the high degree of danger he presents to the community.

20 3. Mr. Fierro-Ponce's History and Characteristics

21 Mr. Fierro-Ponce has been charged with theft six times, as well as harassment, assault,
 22 and refusing to comply. (Dkt. No. 293.) Also, when police arrested Mr. Fierro-Ponce in October
 23 2020, he had six pending warrants in various jurisdictions. (*Id.*) Further, Mr. Fierro-Ponce has
 24 repeatedly failed to appear for past criminal charges. (*Id.*) In this instance, Mr. Fierro-Ponce was
 25 not arrested until October 2020—three months after the indictment became public and many of
 26 his conspirators were arrested. (Dkt. No. 524 at 11.) When police first apprehended Mr. Fierro-

1 Ponce, he gave the police a false name and promised he was telling the truth. (*Id.* at 11.) The
2 police found a small bag of suspected methamphetamine in Mr. Fierro-Ponce's wallet. (*Id.*) His
3 history and characteristics show that Mr. Fierro-Ponce is a risk of nonappearance.

4 4. Nature and Seriousness of Danger to the Community

5 The nature of the danger posed to the community if Mr. Fierro-Ponce were to be released
6 pending trial is substantial. Evidence suggests Mr. Fierro-Ponce used at least one gun during his
7 drug-trafficking activities. (Dkt. No. 79 at 13.) The regularity of Mr. Fierro-Ponce's drug use and
8 his belief that he does not have a drug problem also weighs against finding that he would not be
9 a danger to the community upon release. (Dkt. No. 293 at 2.) While his longtime friend's
10 willingness to act as a third-party custodian and his former employer's willingness to rehire him
11 are positive factors, these developments do not adequately assure the Court that Mr. Fierro-
12 Ponce would not reengage with drugs or harm the community upon his release.

13 **III. CONCLUSION**

14 For the foregoing reasons, Mr. Fierro-Ponce's motion for revocation of his detention
15 order (Dkt. No. 522) is DENIED.

16 DATED this 19th day of July 2021.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE